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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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*Ex parte* JAQUELYN ANNETTE MARTINO and LIRA NIKOLOVSKA

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Appeal 2008-1179
Application 09/739,512[1]
Technology Center 2600

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Decided: September 10, 2008

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Before KENNETH W. HAIRSTON, JOSEPH F. RUGGIERO, and MARC S. HOFF, *Administrative Patent Judges*.

HOFF, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 from a Final Rejection of claims 1, 4-7, 9-11, 19, and 25-27.[2] In the Examiner's Answer, the Examiner maintains the rejections of claims 1, 4, and 27; claims 5-7, 9-11, 19, 25, and 26 are indicated either as allowable, or objected to but allowable

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[1] Application filed December 18, 2000. The real party in interest is Philips Electronics North America Corp.

[2] Claims 2, 3, 8, 20-24, and 28 were objected to as depending from a rejected base claim, but would be allowable if rewritten in independent form.

if rewritten in independent form. Thus, we are presented with the rejection of claims 1, 4, and 27. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellants' invention relates to a string of bead-shaped devices each of which corresponds to a criterion, or set of criteria, for filtering or sorting media content. The string as a whole may be used to control a television, video, or Internet broadcast device. The invention may be used to filter the display of an electronic program guide by touching the user's bead to a console and actuating a control requesting that the profile associated with that bead be used to filter the display (Spec. 2-3).

Claim 1 is exemplary:

1. A user interface, comprising:
at least two physical objects, each associated with a respective data set consisting of at least one datum defining preferences of a user;
a controller connected to a data store and programmed to perform an operation on said respective data sets;
said controller having a receiver;
at least one transmitter operatively associated with said at least two physical objects and responsive to a mechanical state of said at least two physical objects such that a control signal is transmitted to said receiver corresponding to an operation to be performed on at least one of said data sets and responsive to at least the other of said data sets, said controller being programmed to perform said operation.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

| | | |
|---|---|---|
| Cohen | US 6,262,711 B1 | Jul. 17, 2001 |

Claims 1 and 4 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Cohen.

Claim 27 stands rejected under 35 U.S.C. § 112, second paragraph[3], as failing to particularly point out and distinctly claim what Appellants consider to be their invention.

Appellants contend that Cohen does not teach two objects each associated with a respective data set consisting of at least one datum defining preferences of a user, as claim 1 requires (App. Br. 5).

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Appeal Brief (filed December 27, 2006), the Reply Brief (filed June 13, 2007), and the Answer (mailed April 13, 2007) for their respective details.

## ISSUE

The principal issue in the appeal before us is whether the Examiner erred in holding that Cohen teaches two objects each associated with a respective data set consisting of at least one datum defining preferences of a user, as claim 1 requires.

## FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

### *The Invention*

1. According to Appellants, they have invented a string of bead-shaped devices each of which corresponds to a criterion, or set of criteria, for filtering or sorting media content. The string as a whole may be used to control a television, video, or Internet broadcast device. The invention may

[3] The Examiner's rejection does not specify the pertinent paragraph of § 112. Lack of antecedent basis, the defect cited by the Examiner, implicates the second paragraph of the statute.

be used to filter the display of an electronic program guide by touching the user's bead to a console and actuating a control requesting that the profile associated with that bead be used to filter the display (Spec. 2-3).

*Cohen*

2. Cohen teaches a human-computer interface using "interactors." An interface couples a detection field to a controller computer system which, in turn, may be coupled to other systems. When an interactor is entered into the detection field, moved about within the detection field, or removed from the detection field, an event is detected which, when communicated to the computer system, can be used to create a control signal for either the controller computer system or to a system controlled by the controller computer system (col. 2, ll. 39-49).

3. In one embodiment, a videotape or other video source can be displayed on a screen 32 of the video system 30, and events can be "marked" by engaging interactors 34 with the detection field 26 (col. 6, ll. 5-8).

4. Cohen teaches that each interactor has an ID associated with it (col. 14, l. 24).

5. The meaning of an interactor in the detection field is determined from its ID, its location, and whether it is up or down (col. 14, ll. 20-22).

6. This meaning is converted into control commands (e.g. stop, fast-forward, speed etc.) for the media system (col. 14, ll. 25-27).

PRINCIPLES OF LAW

Anticipation is established when a single prior art reference discloses expressly or under the principles of inherency each and every limitation of

the claimed invention. *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1347 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994).

## ANALYSIS

### *Claims 1 and 4*

As an initial matter, we note Appellants' request that the Board remand this appeal to the Examiner because the Examiner has altered the treatment of claims 5-7, 9-11, and 25-27 (Reply Br. 1-2). No new grounds of rejection have been set forth by the Examiner in the Answer. In fact, the "altered treatment" complained of is that the Examiner has withdrawn the rejection (on prior art) of claims 5-7, 9-11, and 25-27. Appellants' request for remand is therefore without merit and is hereby denied.

We select claim 1 as representative of this group, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii).

Appellants argue that Cohen does not meet the limitation of "at least two objects, 'each associated with a respective data set consisting of at least one datum defining preferences of a user,'" in their view, because the interactors of Cohen are used "for providing input to an external system on the basis of spatial location, not for defining preferences of a user" (App. Br. 5-6).

We are not persuaded by Appellants' argument. Cohen teaches physical objects called "interactors" (Fig. 2, item 34) that one or more users may move around within a "detection field" (Fig. 2, item 26; FF 2). A videotape or other video source can be displayed on a screen 32 of the video system 30, and events can be "marked" by engaging interactors 34 with the

detection field 26 (FF 3). Cohen teaches that each interactor has an ID associated with it (FF 4), which means that each "physical object" is associated with a data set consisting of at least one datum, as the claim requires. The meaning of an interactor in the detection field is determined from its ID, its location, and whether it is up or down (FF 5). This meaning is converted into control commands (e.g. stop, fast-forward, speed etc.) for the media system (FF 6). We interpret Cohen's teaching to mean that users, by moving the interactors within the detection field, are expressing their preference[4] that certain functions be performed by the videotape marking system, thus meeting the final limitation of the clause at issue.

We therefore do not find error in the Examiner's position, and we sustain the rejection of claim 1, and of claim 4 not separately argued, under 35 U.S.C. § 102(e).

*Claim 27*

Claim 27 stands rejected under 35 U.S.C. § 112 for a lack of antecedent basis in the phrase "said plurality of beads." The Examiner does not specify what paragraph of § 112 pertains to this rejection, but it is clear that a question of antecedent basis implicates the second paragraph of § 112.

Appellants present no argument with regard to this rejection. Because Appellants have shown no error in the Examiner's rejection, we sustain the rejection of claim 27 under 35 U.S.C. § 112.

[4] We have reviewed Appellants' Specification and have found no limiting definition of "preferences."

## CONCLUSION OF LAW

We conclude that Appellants have not shown that the Examiner erred in rejecting claims 1, 4, and 27. Claims 1, 4, and 27 are not patentable.

## DECISION

The Examiner's rejections of claims 1, 4, and 27 are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

gvw

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